THE

GRIEVANCES OF PROTESTANT DISSENTERS

UNDER THE RECENT

IRISH MARRIAGES ACT,

AND

THE IMMORAL TENDENCY

OF THAT MEASURE,

STATED AND EXPOSED.

BY

A COMMITTEE OF MINISTERS OF VARIOUS DENOMINATIONS

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DUBLIN: ROBERTSON, GRAFTON STREET.
EDINBURGH: W. OLIPHANT & CO., SOUTH BRIDGE.
LONDON: JACKSON & WALFORD, ST. PAUL'S CHURCHYARD;
HEYLIN, PATERNOSTER ROW.

1859.

ADVERTISEMENT.

A FEW ministers, of the different denominations aggrieved by the Irish Marriages Act of 1844, met in Belfast on the 20th of December, 1858, when steps were taken to obtain information on certain points, with a view of preparing a specific application to Parliament for redress; and an adjourned meeting was appointed for the 24th of same month, to which a number of other ministers were invited.

At the adjourned meeting the attendance was greatly increased; and many letters from ministers who could not attend were read, cordially approving of the object, and promising co-operation. A Committee was appointed to collect further materials for a full statement of grievances, and to suggest what remedy ought to be asked from the Legislature.

By that Committee the following paper has been prepared. It expresses the views of a number of individuals, in their private capacity, the religious bodies to which they belong not being responsible for or bound by the statements it contains. Whether any action, and what, shall be taken by these bodies, as such, is a question for their consideration when they meet. Most, if not all of them, have already stirred in the matter separately; but it is hoped they may now find some way to a united and vigorous movement.

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JAMES BAIN, Straid, Congregationalist.
R. J. BRYCE, LL.D., Belfast, United Presbyterian.
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JAMES FITZPATRICK, United Presbyterian.
JOHN GRAHAM, Methodist New Connection.
THOMAS HOUSTON, D.D., Reformed Presbyterian.
R. G. JONES, Wesleyan Minister.
DANIEL MACAFEE, Wesleyan Minister.
HUGH M'INTYRE, D.D., United Presbyterian.
GEORGE VANCE, Wesleyan Minister.

IRISH MARRIAGES ACT.

PRIOR to 1844, Dissenting Ministers in Ireland enjoyed full liberty to celebrate marriages between Dissenters in whatever form was most agreeable to their own consciences; but doubts having arisen whether a marriage performed by a Dissenting Minister was valid, where one of the parties was a member of the Established Church, the question was decided in the negative by the courts of law. Thus bigamists were screened from punishment,—a foul stain was cast on the honour of virtuous women,—and their children were branded as illegitimate.

The state of the law disclosed by this decision, was felt as a gross insult and grievous wrong by all Nonconformists, but especially by the General Assembly of the Presbyterian Church in Ireland, who, claiming to be the representatives of the Church of Scotland, thought that they ought to be regarded less as Dissenters, than as a branch of one of the Established Churches of the Empire. They accordingly took the lead in an application to the legislature for redress; and the other bodies of Presbyterians, as well as the Methodists, the Independents, and the minor sects, left the matter almost entirely in their hands. The result was the Irish Marriages Act of 1844, which removed indeed this grievance, but created such a multitude of new ones, that though Presbyterians were specially favoured in it, there were many even among them who would have greatly preferred that the law had never been changed. It is but justice to add, that the Commissioners of the Assembly, who arranged with Government the terms of the Bill, endeavoured, so far as they understood the views of other bodies, to have a measure framed which should prove satisfactory to all. But the Ministry, rendered arrogant by their large, compact, and obedient Parliamentary majority, were in-

flexible. "If you don't like our Bill," said they, "let the law remain as it is. We are not anxious for a change; but if there is to be a change, it must be this and no other."

In order to understand the nature and extent of these new grievances, we must consider the Act of 1844,—*First*, as it affects Presbyterians,—*Secondly*, as it affects other Protestant Dissenters,—*Thirdly*, as it affects the great moral interests of society at large.

I. GRIEVANCES OF CERTAIN PRESBYTERIAN BODIES.

1. The Act provides "that each Presbytery of Presbyterians in Ireland, may, from time to time, *subject to the approbation of the Lord Lieutenant*, appoint one or more ministers," through whom the meeting-houses belonging to the Presbytery are to be registered, and *by whom licenses for celebration of marriage without publication of banns, may be granted.* The minister appointed for these purposes, is *removable at the Lord Lieutenant's pleasure:* before granting any license, he must *give his bond to the Registrar General for* £100, as security for the faithful execution of his office: if he refuses a license without sufficient reason, the parties may appeal to the Presbytery; but if he grants a license without sufficient reason, the Act *recognizes no right in the Presbytery to interfere.** Presbyterians who can submit to these terms, may celebrate marriage in their own meeting-houses, and according to their own forms, without any interference of a Registrar, provided that oe onr both of the parties be Presbyterians,—if both, either by banns or license,—if only one, by license only.

But there were four Presbyterian bodies in Ireland, viz., the two synods of Reformed Presbyterians, commonly called Cameronians or Covenanters, and the two bodies of Seceders, viz., the Secession Synod, and the Associate Presbytery (the latter now incorporated with the United Presbyterian Church of Scotland, and called the United Presbyterian Presbytery), whose consciences did not permit them to comply with the above conditions, for the following reasons:—

1. To submit any act whatever of an ecclesiastical court to the review of a civil governor, or concede to him the right of dismissing, at his pleasure, an officer appointed by

* Irish Marriages Act, 7 & 8 Vict., cap. 8, (9 Aug., 1844) § 7, 8, 11.

them, they regarded as inconsistent with their oft-declared and much-cherished principle, that "Christ is the alone king and Head of his Church," and, therefore, a violation of their allegiance to Him. On the same principle, they could not submit to that enactment by which the licensing minister is, in respect of that office, entirely removed from the control of the Presbytery, except in the case (not likely to occur) of his refusing to grant a license,—and placed in all other respects, completely under the control of the civil rulers. In defence of submitting to the new Act, it has been urged, that the functions of the Licenser are merely civil, and, therefore, Government do not interfere with religious liberty in claiming a veto on his appointment, and a control over his acts. To this some have replied, that as a civil court ought not to appoint an ecclesiastical officer, so an ecclesiastical court ought to have nothing to do with appointing a civil officer; and others, that the appointment of such an officer, though not a *religious* act, is an *ecclesiastical* one; and that Goverment interference with *any* ecclesiastical act, is a dangerous precedent:—*obsta principiis.*

2. To confer on one minister authority to grant license to other ministers for the performance of any of their functions,* and to confine an office of this nature to ministers, excluding elders, they regarded as an infringement of the two fundamental and distinctive principles of Presbyterianism; viz., perfect parity among ministers as to all matters, and parity between ministers and elders in matters of government and administration.

The provision which prevented Presbyterian ministers from celebrating marriages, unless one *at least* of the parties were a Presbyterian, and that which, when only one was a Presbyterian, prevented them from marrying otherwise than by license, while Episcopalian ministers might marry any pair in any manner, were insulting enough. But these were not attended with much practical inconvenience, and they involved no violation of conscience:—they were *only* insulting—and in the spirit of Christian meekness they might have been borne. But the two points above-mentioned (especially the first), were, for them, matters of solemn duty which could not be yielded. These four bodies were therefore obliged, for conscience sake, to forego the advan-

* Irish Marriages Act; § 8, and Schedule C.

tages which the Act offered to them as Presbyterians, and submit to the greater disabilities imposed on their Non-Presbyterian brethren.

It is not the object of this paper to *defend* these views, but merely to *state* them as the solemn religious convictions of thousands of her Majesty's subjects—convictions which are entitled to respect even from those who may think them over scrupulous.

II. GRIEVANCES OF NON-PRESBYTERIAN DISSENTERS, SHARED BY REFORMED AND SECEDING PRESBYTERIANS.

A meeting-house of any denomination may be registered as a place for solemnizing marriage, on a certificate from ten householders, stating that it has been used by them for one year as their usual place of public worship; but when a marriage is to be solemnized in a house so registered, the following conditions are required:—

1. The names of the parties to be married must be read over at all meetings of the Poor-law guardians which may take place between the time of giving notice of the intended marriage and the time of celebrating it.

2. The Registrar must be present at the marriage.

3. There is prescribed in the Act a particular form of words which must be introduced in some part of the ceremony, and audibly repeated by each of the parties.

4. It is stated in the registry of the marriage, and in the certificate, that the parties have been married *by the Registrar*;—so that the function, the presence, and the very existence of the minister who conducts the ceremony are utterly ignored, and all recognition of, or allusion to, any religious exercise connected therewith, is studiously avoided.

5. The parties married are mulcted in an additional fee of ten shillings to the Registrar, if the marriage be by license, and five shillings, if without.

Such are the only terms on which marriage can be solemnized by Methodist ministers,—by Independent and Baptist ministers,—and by those Presbyterian ministers whose Presbyteries thought it wrong to give the Lord Lieutenant a veto on any act of an ecclesiastical court.

These terms are felt as heavy grievances by the denominations referred to, for the following reasons:—

1. The provision which requires notices of marriage to

be read over by the Poor-law guardians, is extremely offensive to persons about to be married, especially to such as have some standing in society. They look on it as degrading "to have their banns published in the poor-house;" and though for conscience sake they nobly submit to the affront in order that they may be married by their own ministers and according to a form which their conscience approves, it is with a strong feeling of indignation, and a deep sense of wrong.

II. The attendance of the Registrar often causes inconvenience, expense, and delay; and to require it at these marriages, when it is not required at those solemnized by Episcopalian ministers,—by Presbyterian ministers whose Presbyteries have submitted to Government control,—by Roman Catholics,—by Quakers,—or by Jews, was an outrage on the denominations subjected to the requirement, since it cannot be denied that their ministers are at least as worthy of being trusted to solemnize marriage without a Registrar to watch them, as those of the Christian sects to which this Act is so unduly partial, or as the Jews.

III. It is not within the province of a Government or a Legislature to prescribe any form or mode of contracting marriage; because such prescription is quite useless: the law defines what marriage is, and any form whatever whereby the parties declare that they have placed themselves to one another in the relation which that definition specifies, is perfectly sufficient for every purpose with which the law has any concern: any attempt to dictate a formula of contract is a piece of wanton and vexatious meddling; and the prescription of such a form in an Act of Parliament, for one portion of Her Majesty's subjects, while the rest are left free from interference, is a gratuitous and paltry affront to those on whom it is imposed, and altogether unworthy the dignity of the legislature of a free country. Further, some of the religious bodies on which this form is imposed, object so strongly to any interference of civil lawgivers with a religious exercise, that, rather than use the prescribed words, they send their people to the Registrar's office to go through the form appointed by the law as a secular contract, and afterwards meet them in another place to celebrate what they regard as the real marriage, in a becoming and religious manner.

IV. The statement in the Registrar's book that the parties have been married *by him*, does not appear to be prescribed by the Act, and is probably a piece of petty tyrannical insolence emanating from some secret source in the administrative department. Be this as it may, the statement is false; for if matters be properly conducted, the Registrar takes no part whatever till the contract of marriage is completed; and the regulation which compels the Registrar to write the falsehood, can have had no other motive than to pour contempt on Methodist and Dissenting ministers, by disowning their share in the ceremony, and attempting to reduce marriage solemnized by them to the level of those purely secular contracts entered into at the Registrar's Office, in which the marriage vow loses half its moral weight by losing all its sacredness. As to Covenanters, and Seceders, it has been tauntingly told them that their grievances are of their own making; and that they might have obtained the same privileges as other Presbyterians, by complying with the requirements of the Act, and appointing a "Licenser," subject to the approval of Government; but they reply, that galling though their position is, they will bear all this and much more, rather than surrender to any earthly ruler any control whatever over any act whatever of an Ecclesiastical Court.

V. If the Registrar has the extra trouble of going to a Methodist, Independent, or other meeting-house, to watch another man performing the ceremony, instead of doing the business himself, in his own office, it may be fair enough he should have extra pay; but it is *not* fair to mulct the persons married. The true way to settle the matter is to let the Registrar stay at home. The only use of his being present, is to put an affront on the young couple and their pastor, and if possible drive them to get married elsewhere. To lay aside circumlocution, the plain truth is, this Act, though in a covert manner, fines the bridegroom for being a Methodist or Dissenter, just as it insults, for the same reason, the minister who marries him.

It was pleaded as an excuse for the vexatious and insulting provisions of the Act of 1844, that gross abuses had taken place in connection with the celebration of marriages in Ireland. It is true there were abuses; but it is also true, not only that from such abuses the religious bodies

aggrieved by that Act were perfectly free—but also that they were the only bodies in the country of whom this could be said. Thus the framers of this absurd measure have been not only oppressively stringent with those who need no restraint, and indulgent to those whose past conduct was lax, but also most indulgent to those whose irregularities were greatest.

III. INJURY TO PUBLIC MORALS.

But while this Act deserves to be condemned, as offering violence to the consciences of many of her Majesty's subjects, and invading the religious liberty of a still greater number by its frivolous restrictions and insulting distinctions, it is not less worthy of reprobation on account of its mischievous effects on the morals of the community.

I. It affords the greatest facilities for improper marriages of all kinds, by the careless and unskilful way in which it attempts to guard against them.

It recognizes three modes of contracting marriage, viz.,—by publication of banns; by notice given to the Registrar, and read before the poor-law guardians; and by license.

1. The ancient rule of publication of banns on three successive Lord's Days was intended to give notice of an approaching marriage to all persons whom it might concern, in order that, if in any way improper, it might be stopped. The regulation answered its purpose very well for the times in which it was instituted, when the immense majority of the people lived and died in the parish where they were born; and when, there being only one place of worship in the parish, announcements made in the Parish Church were really made to the whole parishioners; but in the present state of society some further security is required, as will appear in the sequel.

2. The notice to the Registrar, read before the Poor-law guardians at all their meetings during twenty-one days, is a clumsy and absurd imitation of the old institution of publication of banns; and that it is inefficient as a safeguard against improper marriages, a moment's consideration of the regulations concerning it will prove.

Any person who has resided seven days within a district may give notice of an intended marriage. Sometimes a district is so extensive that the Registrar lives 12 or 15

Irish miles (about 15 or 20 English) from one of the extremities. In such cases, it is manifestly impossible for the Registrar to know anything about any considerable number of the persons who give notice of marriage ; and even if it were certain that all the guardians would be present at some of the two or three meetings intervening between the notice and the marriage, and would pay most earnest attention to the reading of the list, how can it be expected that each guardian will be so familiar with the names and history of all persons residing in even his own division of the union, as to identify the John Thompson and Mary Smith, whose names the clerk has read out as intending to get married ; or will have so much generosity, or so much spare time, as to take the trouble of hunting them out and ascertaining whether they are minors, and, if so, intimating the intended marriage to their parents or guardians,—and in any case letting the girl's friends know, that they may satisfy themselves whether the aspirant bridegroom be a single man. If the district comprise a large town, like Belfast or even Newry, notice given to the Registrar and read to the Poor-law guardians, is an absolute nullity. The man may have one or more wives living :—the woman may have a husband alive, or may be a minor, or may be sister or stepmother to the intended bridegroom, yet no one may suspect that anything improper is going on.

Were the Registrar's Office always a separate concern, opening on the street and furnished with a board or brass plate indicating what it is, there would be some little chance of detection, inasmuch as any person seen going into it or out of it would be supposed to do so on some matrimonial business. But, connected as Registrar's Offices generally are with shops and offices, to which people are continually resorting for other purposes, they afford the greatest facilities for secresy.*

3. If any slight barrier to improper and clandestine marriages is interposed by the process of giving notice to the Registrar, even that feeble protection to parental rights and public morals is completely swept away by the system of Licenses.

On the seventh day from that on which the notice has been given, one of the parties goes to the Registrar and

* The evils arising from contracting marriage in the Registrar's office are well put in a Memorial to the Lord Lieutenant from the Non-Subscribing Presbyterian Association, which has been printed, but not published.

makes a solemn declaration, that there is no impediment to the marriage,—pays his fee of five shillings,—and that day, or next morning, gets married. If he times his notice properly, gets his license at the earliest hour he can, and acts upon it promptly, the knot may be tied by the Registrar before the notice has been read at the Poor-law Board. The victim might even be daughter to one of the guardians, and her father know nothing of her ruin till several hours after it had been accomplished.

The Licenses, granted by surrogates in the Established Church, and by the licensing Presbyterian ministers, are not quite so objectionable as those granted by the Registrar; because the character and position of the grantors affords some sort of security against abuse; but, at bottom, they have the same vices, namely:—

(1.) The law requires no evidence of the non-existence of impediments, beyond the oath or solemn declaration of the interested party.

(2.) The officer who grants them receives a fee for doing so; and it is therefore his interest not to be over-scrupulous in granting them.

(3.) They utterly ignore and set at nought parental authority and influence, for young persons who have reached the age of 21. Whether it be right or not that, after that age, a parent should have no power absolutely to *prevent* the marriage of a child of either sex, it will surely be admitted that he ought to have notice of it, in order that he may use *persuasion* against it if he should deem it improper.

(4.) They create an invidious and odious distinction between the rich and the poor. They enable a man to purchase with a little money, not only exemption from a duty which he owes to society, but also a facility for committing crime.

4. In so far as the Act, by providing for a certain degree of publicity, does give some chance that parties concerned may have notice of an intended marriage, it relies entirely on publication in a district in which the parties have resided for the short period of seven days. But with the facilities for locomotion now within the reach of all sorts of persons, it is plain that such publication is "a mockery, a delusion, and a snare." A villain may leave a wife and children behind him and remove to a distant part of the country,

where he can represent himself as a bachelor, or, better still, a widower. He may gain the affections of a woman and the confidence of her friends; his intended marriage may receive the utmost publicity that even publication of banns can give it, and yet no whisper of his wicked intentions may reach the ears of his deserted wife or her friends, or of any one who could warn his intended victim of her danger.

These considerations will shew to every person of ordinary discernment, that the law, as it now stands, opens a wide door not only to clandestine marriages, but to polygamy, incest, and adultery,—besides offering strong temptations to perjury.

II. While the law is thus mischievously lax in its general character, it is, at the same time, injuriously strict in making no provision for relaxing ordinary rules in cases of emergency. It permits no marriage to take place sooner than seven days after notice has been given to the person authorized to grant license. Now, cases occasionally occur, in which the most grievous injury must result from this state of the law. For instance:—a man is engaged to be married; he can satisfy the strictest tribunal in a few minutes that no impediment exists; and he has arranged his wedding for the 1st of June; notice need not be given till the 24th or 25th of May; but on the 25th of April he receives a letter which compels him to start for a distant country in 48 hours. The law provides no means by which he can be married before his departure, though the consequences may be, in some cases, such a delay of their union as shall inflict great pecuniary loss and great mental suffering on both parties; and in others, a hopeless separation which shall render both of them miserable for life, and expose one of them, at least, to great temptation. The same defect in the law may prevent a repentant seducer from making reparation to the woman he has wronged.

III. The Act is injurious to the interests of religion, inasmuch as it tends to foster superstition on the one hand, and infidelity on the other;—infidelity, by the exclusion of all recognition of a God from the form it prescribes for the contract when made in the Registrar's Office; superstition, by making houses of worship the only other places where marriage can be contracted.

A Government or Legislature ought not, on the one

hand, to enjoin the introduction of a religious sanction into the marriage contract; nor ought they, on the other hand, avowedly to institute and provide for a form of marriage from which the religious sanction is deliberately excluded. Many say that marriage is a civil institution, not a religious one; and if they mean that it affects the relations of human beings to one another in civil society, and belongs exclusively (Matt. xxii. 30) to the present life, and is not connected with our direct duty to God or with our redemption, they are undoubtedly right. But if they mean that marriage was instituted by the authority of civil rulers, or by consent of the members of civil society, and that its obligations rest wholly on such authority or consent, and not on a direct command of God, they are undoubtedly wrong. But laying aside the somewhat vague terms "Civil" and "Religious," all Christians will agree that marriage is a Divine institution:—*i.e.*, it emanates from God,—it is His command that gives to the connection between the sexes that sacred and permanent character which is one of the chief distinctions between man and the lower animals. It is, therefore, the duty of the parties contracting marriage to acknowledge God in doing so; and the Legislature ought to assume that they will, but ought neither to compel them to that course, nor tempt and encourage them to the opposite. It would be wrong to force a religious form on those who object to it; but when parties who prefer the Registrar's Office for other reasons, wish to use a religious form, it is equally wrong to force them to forego it.

Such are the offences against religious liberty and public morals with which the Irish Marriages Act of 1844 is chargeable; offences so serious, that even if its other provisions were good, they would be dearly purchased. But its other provisions, *i.e.*, those which aim at securing the secular interests of society, are of a very inefficient and objectionable character.

1. It provides no means of doing the Registrar's work should he be sick, or during the interval between his death and the appointment of his successor. Instances have occurred of a person travelling upwards of 150 miles to be present at the marriage of a friend, and finding on his arrival

that owing to the illness or death of the Registrar, the marriage must be put off till a day for whose arrival he could not wait; and of a wedding party being assembled in a meeting-house, only to receive the astounding news that the Registrar had been taken suddenly ill and could not attend, and therefore there could be no wedding.

2. All clergymen whom the Act authorizes to solemnize marriage without the presence of the Registrar, are themselves made Registrars of marriages. This is very objectionable; because, among such a multitude of Registrars, the risk of mistakes in making the entries, and the risk of the books being damaged or lost in their transit to the office of the District Registrar, is greatly increased. For a man may be an excellent clergyman and yet a very bad man of business, a man whom nobody that knows him would expect to make his entries accurately and regularly, or to preserve his books with the necessary care; and, finally, because there is a difficulty in making a clergyman as thoroughly responsible for any error that may arise, as it is desirable that any person entrusted with the duty of registering should be.

3. Marriages celebrated by Roman Catholic clergymen, the Act does not require to be registered at all, thus taking away half the benefit which a registry confers on the administration of the laws, and rendering it almost totally useless for statistical purposes.

It has been proposed by a Mr. Arthur Moore, in a paper read before the British Association at their meeting in Dublin, in September, 1857, that the obligation to register be laid on Roman Catholic clergy as well as on others; but that no attempt should be made to interfere with their mode or form of solemnizing marriage.* The principle is excellent; but why should it be confined to Roman Catholics? Surely while the clergy of all Protestant denominations, the Established Church itself not excepted, are bound hand and foot as to the mode of marrying, it is rather bold to propose that Roman Catholic priests shall be completely free. And this very *cool* suggestion has not only been endorsed by a Committee of the Statistical Society of Dublin, in a Report dated 20th October, 1858,* but adopted in a Registration Bill, which has just been brought into the House of Commons, bearing on its back the names of the

* See Appendix A.

Chief Secretary and the Attorney-General for Ireland, though it is to be hoped they had not much to do with the drawing of it. Nay, the Bill improves upon the audacious proposal of the statists ; for while, by the Act of 1844, any Protestant minister refusing or neglecting to register a marriage performed by him is subjected to a heavy penalty, the measure introduced by Lord Naas, proposes that if the Roman Catholic clergyman "shall refuse or omit" to register a marriage solemnized by him, the parties be *permitted* (!!) by a comparatively troublesome and expensive process, to have their marriage recorded in a "Supplemental Register," specially provided for indulging the humour of the recusant or careless priest.* Thus, the Legislature is asked to stultify itself, by introducing into a Registration Act a clause which nullifies the provisions of the Act for more than half the community. And, while Protestant ministers of all denominations are tied down to certain hours and places, and many of them to the use of a set form of words, and cannot in the most urgent case solemnize marriage till some notice be given, the Act of 1844 tacitly, and Lord Naas' Bill explicitly, preserve to Roman Catholic clergymen the right of marrying in any place whatever, and at any hour whatever of the day or night, without any interference whatever with the form they use, and without requiring that any previous publicity whatever be given to the marriage. What is the secret of this signal favour to Roman Catholics? Is it love or fear? Do the framers and promoters of the Bill feel unbounded confidence and reverence for the Roman Catholic clergy, while they are so utterly jealous and distrustful of all others ; or do they lack courage to attempt laying any restraint on a powerful and spirited body of men, cordially united in a common cause?

These remarks are not intended to express any disrespect towards the Roman Catholic clergy of Ireland, but to expose the gross partiality of measures which, while leaving them so free, impose such useless, frivolous, vexatious, insulting restrictions upon others, who are at least equally worthy of being treated with respect and confidence.

Let the Protestant Dissenters of Ireland arise as one man and demand a change of this atrocious legislation ; and, remembering that they are Britons and freemen,

* See Appendix B.

let them not stoop to any paltry or temporizing policy, but demand to be put on a perfect level with their countrymen of other religious denominations. And, looking beyond the redress of their own grievances, let them press for a measure which shall effectually guard the sacred rights of conscience, and effectually protect the highest interest of their country—her social and domestic virtue.

In order to this, not only the Act of 1844, but the whole existing law by which the contracting of marriage is regulated, must be revised on enlightened and Christian principles. What those principles are is now to be considered.

PRINCIPLES ON WHICH AN AMENDED MARRIAGE LAW SHOULD BE FOUNDED.

I. The functions of a Government or Legislature, in reference to the contract of marriage, embrace only two points:—1. To guard, as far as practicable, against two people forming a contract whereby the legal rights of a third party are invaded, or damage done to the interests of society at large. 2. When a proper contract is formed, to protect the rights conferred by it on the parties and their descendants. Therefore an amended law ought to provide—

1. That an intended marriage be published for a certain time before its celebration, so that all persons whose rights it is likely to affect may have due notice of it:—

2. That when one of the parties is a stranger in the locality where the marriage is to take place,—effectual means be used for tracing him to his former residence, and ascertaining whether any impediment be known there:—

3. That the time between the first publication of the marriage and its celebration may be shortened, provided it be proved by some evidence in addition to the assertion of the interested party, to the satisfaction of a competent and impartial tribunal, (1.) that no impediment to the marriage exists, and (2.) that injury or serious inconvenience would arise from allowing the full time to run. No fee to be taken, *in any case*, for granting this relaxation.

II. The law ought to be precisely the same for all ranks in society, and for all religious denominations. Therefore—

1. All religious denominations ought to have perfect liberty to celebrate marriage according to their own forms.

2. There ought to be a uniform and efficient system of

registration, conducted *exclusively by lay officers*, and strictly enforced on all persons without distinction or indulgence, as in the admirable and judicious Registration Act passed in 1854 for Scotland.*

3. No relaxation of the general rules, established as necessary for the general good, ought to be procurable by interest, or purchasable by money. The high and the low, the rich and the poor, ought to be alike required to render homage to the great interests of morality.

HEADS OF A BILL TO AMEND THE IRISH MARRIAGE ACT OF 1844.

I. Repeal the whole of the Act of 1844, or as much of it as may be incompatible with the present measure.

II. Enact that one or more Sub-Registrars be appointed at convenient places in each district; that any of these shall act for the Registrar, in the event of his inability, through illness, &c.; and, that in the event of his death, resignation, or dismissal, the senior of such Sub-Registrars shall perform all the functions of the Registrar till the appointment of a successor.

III. That either [or both] of the parties to be married, shall give notice to the Registrar or Sub-Registrar, in a form to be supplied by that officer. [Give form of notice in Schedule A.] Fee .....

IV. That the Registrar shall give publicity to this notice by .....;† and if no objections be lodged with him within twenty-one days from such publication, the Registrar shall issue an "ordinary certificate" of the publication, and of the non-lodgement of objections. [Form in Schedule B.]

V. That if either of the parties be a stranger in the district [define "stranger"] the Registrar shall require him or her to produce, at the time of giving notice, a certificate from the clergymen or clergyman whose ministrations the parties usually attend, or from two magistrates, or from three householders entitled to vote at the election of a member of Parliament, certifying that the persons signing said attestation have made full enquiry, and do believe that the said party is unmarried, and that there

* See Appendix C.

† The *mode* of publication, being a matter of detail, is not introduced here: for suggestions concerning it, see Appendix D.

exists no lawful impediment to the intended marriage. [Give form of certificate in Schedule C.]

VI. That if such certificate be not lodged at the time of giving notice, the Registrar to whom notice is given shall write to the Registrar of the district in which said party last resided, enquiring whether said party be *bonâ fide* unmarried. [Give form of such letter in Schedule D.] And if the party be a stranger in the second district, this second Registrar shall transmit the enquiry to the Registrar of the district in which the party previously lived, and so on. For each letter so written Registrar to have fee of..... :—his expenses incurred in following up these enquiries to be paid by Government.

VII. That after eight days have elapsed from the first publication of the intended marriage, the Registrar may issue a "special certificate" authorizing the immediate celebration of the marriage [Schedule E.], provided it be certified to him by the parents of the parties, if alive, or by their guardians or those who were their guardians during their minority, and also by the clergyman or clergymen whose ministrations they usually attend, and two laymen holding office in the congregation, or each of the congregations, to which they belong (*i.e.* churchwardens in the Episcopal church, elders, deacons, &c. in the Presbyterian and other churches), that no lawful impediment exists, and that injury or serious inconvenience would arise from further delay. No fee to be charged, nor expenses allowed, to the Registrar for this certificate.

VIII. That if two persons desiring to be married, shall show to the satisfaction of one of Her Majesty's justices of the peace, by a certificate from the clergyman whose ministrations one of the parties attends, and by other evidence, that great and serious injury would arise from deferring their marriage, and that no impediment thereto exists,—such magistrate may direct the Registrar to issue an "extraordinary certificate" authorizing the celebration of the marriage at any time according to the magistrate's discretion, and the magistrate shall always fix the latest time that may be compatible with the avoidance of the apprehended injury :—no fee to be charged for this.

IX. That at any time after the issuing of the Registrar's "ordinary certificate," or "special certificate," or "extraordinary certificate," the marriage may be celebrated

according to the forms in use in the religious bodies to which the parties belong, or in any form approved by their consciences, provided always that there be present not fewer than two witnesses, besides the minister or other person celebrating the marriage, and provided also that the Registrar's certificate be first audibly read by the person celebrating the marriage.

X. That all Licenses, either by Registrar, or by any ecclesiastical authority, shall cease:—and either permit all marriages to take place in private houses, or abolish special license.

XI. That a form for registration be issued by the Registrar, along with the certificate authorizing the marriage; and that this form be filled up and signed by the parties married, by the person who celebrates the marriage, and by two witnesses, and returned to the Registrar to be copied into his book, and forwarded to the Registrar-General to be preserved.

XII. Penalties—1. On the Registrar, for neglecting to give publicity (§ IV);—for accepting notice from a "stranger" without either the certificate required by § V, or the enquiry appointed by § VI;—for issuing the "special certificate" (§ VII), or "extraordinary certificate" (§ VIII), without the securities required; and for neglecting to register after the marriage. 2. On officiating minister for not reading Registrar's certificate. 3. On *somebody* [in Scotland it is on the persons married] for not returning the schedule of marriage for registration. 4. On magistrate for directing issue of "extraordinary certificate" on insufficient grounds.

XIII. Failure in formalities not to vitiate marriage.

English Dissenters, to whom the late changes in the marriage law of England were a relief from most intolerable bondage, will, perhaps, wonder that a state of matters not very much worse than that which exists for themselves, should be complained of in so strong terms by their brethren in Ireland. Scotchmen, on the contrary, are wondering that a law which robbed Irish Dissenters of rights they had enjoyed for two or three generations, was ever submitted to at all. Submitted to it certainly would not have been, but for the want of that united action to which it is hoped the present publication may lead.

APPENDIX.

Appendix A.

I. *Extracts from Mr. Arthur Moore's Paper on Registration, read before the British Association in Dublin, Sept.*, 1857.

"The limited registration of marriages in Ireland, provided for in 1844 by an 'An Act for Marriages in Ireland, and for Registering such Marriages,' does not include the marriages of Roman Catholics, who form the great majority of the population. As a system of registration, even of marriages, it is altogether partial and incomplete: yet it entails a charge of nearly £4,000 per annum upon the Consolidated Fund, besides local charges, of which there are no published returns. . ."

"There would seem to be no good reason why all these marriages should not be registered . . . or why the Roman Catholic portion of Her Majesty's subjects in Ireland alone should not have the same facilities in these respects as in England, Wales, or Scotland, where all marriages—Roman Catholic as well as others—are recorded in the General Registry."

"And the more especially is the exclusion of any unnecessary, when the registry can be effected, as is contemplated by the measure now suggested, without offending any religious conviction, or interfering in any manner with the existing law and practice in respect to the solemnization of marriage by Roman Catholics according to their rites and solemnities, and under the religious sanction recognized by them. It is only proposed to register the marriages; . . . . but it is not proposed to interfere with regard to the marriages themselves, or to disturb the existing law which has been so recently enacted on this subject."

"Roman Catholics would, therefore, continue to contract and solemnize marriage in all respects as at the present moment; and it is not proposed to do away or interfere with existing custom in regard to fees or dues."

II. *Extract from a Report on Registration by a Committee of the Dublin Statistical Society, dated 28th Oct.*, 1858.

"Your Committee are of opinion that any measure of Registration of Marriages for Ireland which should seek to embrace Roman Catholic marriages should not impose any formalities as conditions affecting the legal validity of marriages, but

should be strictly confined to the object of procuring a record of each marriage when solemnized. We consider that the fact of marriage should be registered by the District Registrar upon a certificate obtained by him from the officiating clergyman, who should receive for each such certificate a small fee."

Appendix B.

Extracts from a Bill for the Registration of Births, Deaths, and Marriages in Ireland, brought in by Lord Naas and Mr. Attorney-General for Ireland. Ordered by the House of Commons to be printed, 8th March, 1859.

The Act of 1844 having made no provision whatever, permissive or compulsory, for the registration of marriages solemnized by Roman Catholic clergymen, the Bill of Lord Naas, in sections XX. and XXI., requires that such marriages be registered by the officiating clergyman, and furnishes him with the means of doing so. The other sections relating to this matter are given in full:

"XXIII. If a Roman Catholic clergyman, having solemnized any marriage which, according to the provisions of this Act, ought to be registered, shall nevertheless refuse or omit to register or make a certified copy of the same in manner aforesaid, it shall be lawful for the parties so married, together with some one of the persons present on the occasion of such marriage, at any time within six months after the solemnization thereof, to cause the said marriage to be registered, and for that purpose to attend personally before the Registrar of the district within which the marriage shall have been so solemnized, and to make and subscribe a solemn declaration (which declaration the said Registrar is hereby authorized to administer), according to the best of their knowledge and belief, of the several particulars required to be set forth in a Register of Marriage according to the form in the schedule (C.) to this Act annexed; and it shall thereupon be lawful for the said Registrar, and he is hereby required, to register such marriage, according to such declaration, in a book to be called the Supplemental Marriage Register, which book shall be furnished to him by the Registrar-General.

"XLII. Nothing herein contained shall . . . . in any way limit or interfere with the power at present possessed by Roman Catholic clergymen with regard to marriages, which they may now lawfully solemnize."

Appendix C.

Law and Practice of Scotland regarding the Solemnization of Marriage.

As there exists in this country a great deal of ignorance on the subject of the law by which the contracting of marriage is regulated in Scotland, it has been thought advisable to give

here a brief statement of the present practice as modified by the Act of 1854.

"1. As a general rule, there is, in each parish, a Registrar chosen by the Parochial Board,* though the Act of 1854 provides, that for the purposes of registration, parishes may be united or divided, or part of one annexed to an adjoining parish.

"2. The Registrar may appoint an assistant, for whom he is responsible, and who acts for him when he is ill or absent, and during a vacancy.

"3. The Registrar must dwell in the parish, and must have his name on his house or office.

"4. The Registrars are under the superintendence of the Sheriff of the County, [a judicial functionary corresponding to the Assistant-Barrister in an Irish County.]

"5. Parties about to be married give notice, personally or by substitute, to the Registrar of the parish in which they reside:—if they reside in different parishes, notice is given to the Registrar of each.

"6. The Registrar causes the Banns to be published ["proclaimed" is the Scotch term] in the parish church or churches; and if no objections be lodged, he issues a certificate to that effect, to be presented to the officiating clergyman as his authority for performing the ceremony. If such proclamation has not been made and duly certified to him, the minister officiating is liable to prosecution under old Acts of Parliament, which subject him to banishment from Scotland.

"7. The marriage may be solemnized at any place (it is usually at the residence of the bride), and at any time (among the upper and middle classes it is usually between TEN a.m. and TWO p.m.; among the working classes, more frequently in the evening).

"8. Along with the certificate of proclamation the Registrar issues a Schedule, containing seven columns, having the following headings:—1, When, where, and how married; 2, signatures of parties; 3, age; 4, residence; 5, rank or profession; and condition (bachelor or widower, spinster or widow)—relationship of parties (if any); 6, name, surname, and rank or profession of father—name and maiden surname of mother; 7, signatures of officiating minister and witnesses.

"9. This Schedule is produced to the officiating minister with the columns 1, 3, 4, 5, and 6 filled up; or else these are filled up in his presence: the signatures are then attached in columns

* Prior to 1851 the work of Registrar, so far as it was done at all, was done by the Session Clerk; and the new Act provided that the Session Clerk in office at the time of its passing, should be the first Registrar in each parish, unless it should be proved to the Sheriff (see No. 4.) that he was unfit, or that his other duties were incompatible with those of Registrar

2 and 7; and the parties married must (under a penalty of £10) deliver it or send it by post "to the Registrar of the parish wherein the marriage was solemnized;" and he forthwith enters its particulars in the duplicate registers kept by him :—all such schedules are transmitted with the duplicate registers to the Registrar-General for preservation in the general registry office."

The foregoing statement is taken partly from the Act of 1854 itself, and partly from a statement obligingly furnished by a Scotch clergyman. The whole has been kindly revised and corrected by an eminent member of the legal profession in Edinburgh. In answer to an enquiry regarding the working of the Registration Act, the same gentleman states, that he has heard of no complaints, and believes that it works well. He was particularly asked if there are many instances of the parties failing to return the Schedule to the Registrar, and he replies that he knows not of complaints even on that score. He suggests that it is the interest of the Registrar to enforce the penalty, and that a threat of prosecution will naturally bring in the Schedule if it has not been returned within the three days.

Appendix D.

On the mode of giving publicity to intended Marriages.

The only practical difficulty experienced in drawing up these "Heads of a Bill," has been to devise some mode of giving *legal* publicity to an intended marriage, without very strongly running counter to the prevailing prejudice against all *formal* publication, which has sprung up out of the absurd and corrupt practice of License. There seems to be no objection in the popular mind to *publicity* in itself; for almost every intended marriage is made known (and in the highest circles, even through the newspapers) many weeks before it takes place. But this publicity is of no *legal* use, because it cannot be distinguished with sufficient clearness from common rumour. The publication must be *formally* authorized by the parties, else the law cannot use it for the protection of social order and public morals; and it is against this *formal publication*, not against *the publicity it gives*, that the prejudice is directed.

This inconsistent popular feeling has arisen from the absurd practice of marrying by license. That privilege, like other indulgences and dispensations, was at first granted only to persons of rank, and was coveted by them as a token of their consequence,—a proof that they were not to be bound by the same laws as ordinary mortals. But a license soon became attainable by any one who could pay the fee. The sale of these indulgences, being profitable, was encouraged; and the purchase of them, being a mark of gentility, was aimed at even by persons who could not very well afford it; and so the ancient practice of

publication of Banns came to be considered a mark of vulgarity, and a cry was got up against it on false pretences of delicacy and decorum, which, in process of time, came to be regarded as sincere and valid. Of course, the same, or stronger objections were felt to any other mode of formal publication.

The only way to meet this morbid feeling, is (as suggested in the foregoing pages), to abolish every shape and form of the present system whereby license is granted on the oath of one of the parties and payment of a fee; to allow the regular interval between the marriage and its solemnization to be shortened only on cause shown; and to require some uniform mode of publication for all sorts and conditions of persons.

The Committee, after the most careful consideration of the subject, have not been able to think of any mode of publication liable to so few objections as the publication of Banns in the place or places of worship usually attended by the parties; but, to provide for the few cases which undoubtedly do occur, of persons who have no place of worship, they would suggest an alternative. They propose, therefore, to enact as follows:—

I. That if a person giving notice of an intended marriage shall present to the Registrar a letter from the minister of the congregation to which the parties belong [or, if they belong to different congregations, from both ministers] undertaking to cause Banns to be proclaimed: then the Registrar shall simply enter the notice in his notice book. But if such letter or letters be not presented, he shall, besides the entry in his notice book, also copy the memorandum of every such notice into a sheet of paper to be exhibited in the window of his office, so as to be legible from the street, or road, or ground outside.

II. That when the minister or ministers who undertook to cause Banns to be published, shall have certified to the Registrar that such publication has been made on three Lord's-days (or on three days of public worship, between the first and last of which not less than twelve days have intervened), the Registrar, if no objections have been lodged, may, fifteen days after the first publication, issue a certificate stating the publication and the non-lodgement of objections; whereupon the marriage may immediately be solemnized, this certificate of the Registrar being first audibly read to the persons assembled. But that this interval may be shortened on cause being shown: see "Heads of a Bill." VII. and VIII., page 18.

III. That where no undertaking from a minister to have Banns published has been presented, the notice above specified shall remain in the window of the Registrar's office for twenty-one days, unless cause shall be shewn for shortening the time, as proposed in the "Heads of a Bill," VII. and VIII., page 18.

Alex. Mayne, Printer, High Street, Belfast.